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8 VIVIAN SALAZAR,
9 Plaintiff,
10 v.
11 VICTORIA'S SECRET & CO.,
12 Defendant.

Case No. 23-cv-06654-MMC

**ORDER DENYING AS MOOT
DEFENDANT'S MOTION TO DISMISS;
VACATING HEARING**

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14 Before the Court is defendant Victoria's Secret & Co.'s Motion to Dismiss, filed
15 May 8, 2024, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil
16 Procedure. On May 22, 2024, plaintiff Vivian Salazar filed a First Amended Class Action
17 Complaint ("FAC").

18 A party may amend a pleading "once as a matter of course within . . . 21 days after
19 service of a responsive pleading or 21 days after service of a motion under Rule 12(b),
20 (e), or (f), whichever is earlier." See Fed. R. Civ. P. 15(a)(1). "[A]n amended pleading
21 supersedes the original, the latter being treated thereafter as non-existent." Bullen v. De
Bretteville, 239 F.2d 824, 833 (9th Cir. 1956), cert. denied, 353 U.S. 947 (1957); see also
22 Falck Northern California Corp. v. Scott Griffith Collaborative Solutions, LLC, 25 F.4th
23 763, 765 (9th Cir. 2022) (holding filing of amended complaint "renders [initial complaint]
24 without legal effect") (internal citation and quotation omitted)).

25 In the instant case, plaintiff filed her FAC within 21 days after service of the motion
26 to dismiss, and, consequently, was entitled to amend as of right. See Fed. R. Civ. P.
27 15(a)(1).

1 Accordingly, defendant's motion to dismiss the initial complaint is hereby DENIED
2 as moot, and the hearing scheduled for June 21, 2024, is hereby VACATED.

3 **IT IS SO ORDERED.**

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5 Dated: May 29, 2024

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7 MAXINE M. CHESNEY
8 United States District Judge

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United States District Court
Northern District of California